

Response to ECGD
“Consultation on the Introduction of a Product Guaranteeing
Reimbursement of UK Confirming Banks under Letter of
Credit Arrangements”

INTRODUCTION

1. This is a joint submission from The Corner House and Jubilee Debt Campaign [hereafter the “Consultees”].
2. The Consultees recognise the severity of the current recession and fully endorse the need for the UK Government to respond actively by intervening in the markets in order to stabilise and reform the financial system; stimulate the economy; secure decent jobs; and build for a sustainable post-recession future.
3. But the Consultees are firmly of the view that such intervention must comply *inter alia* with:
 - The UK’s international human rights obligations;
 - The Government’s stated sustainable development policies and international environmental undertakings;
 - The Prime Minister’s recent commitment “*to make sure that, when we support our economies, we do so in a way that also protects the environment*”;¹ and

1. “Statement on the G20”, 2 April 2009, http://www.hm-treasury.gov.uk/statement_chx_020409.htm.

- The Government’s undertaking, as reflected in the London Summit Statement of the Leaders of the G20, that any fiscal stimulus package should be directed at building an “*inclusive, green, and sustainable recovery*”.²
4. The Consultees acknowledge the difficulties that exporters are experiencing in obtaining short-term credit as a result of the “credit crunch”. But they considers that the ECGD’s proposed Letter of Credit Guarantee Scheme (LCGS), which is intended to assist exporters in obtaining export finance insurance at a time when the banks have a limited appetite for risk and upon which this consultation is being held, is ill-conceived in a number of its central elements.

The Proposed Scheme

5. Under the proposed Scheme, the ECGD plans to guarantee any losses that participating commercial banks³ might incur as a result of their making payments to a UK exporter against a short-term “Letter of Credit”⁴ issued by an overseas bank in favour of the UK exporter.⁵
6. But the ECGD also plans to exempt the Scheme from ECGD’s stated policies on human rights, environment and sustainable development.

2. G20, “Global plan for recovery and reform: the Communiqué from the London Summit”, <http://www.londonsummit.gov.uk/en/summit-aims/summit-communication/>, Para 4.

3. The scheme would be open to any bank incorporated in a member state of the European Union or of the Organisation for Economic Cooperation and Development (OECD), provided that the bank carries out business in the UK and that the Letter of Credit covered by the scheme is handled through the bank’s UK offices. See: ECGD, “Description of Proposed Letter of Credit Master Guarantee Scheme”, http://www.ecgd.gov.uk/annex_a_-_description_of_lcms-2.pdf, para 6.1.

4. Letters of Credit are long-established instruments in trade finance. Where a UK company sells good overseas, it will typically make it a condition of the contracts that the buyer arranges for their bank to give an irrevocable undertaking – which takes the form of a “letter of credit” – to pay for the goods exported on production of documentary evidence that the goods covered have been shipped. This is known as an “unconfirmed” letter of credit. Where the UK exporter fears that the overseas bank may default on the undertaking, the exporter arranges (in return for a fee) for a UK bank to “confirm” the letter of credit. In this instance, the exporter is paid by the UK bank on production of the shipping documents – and it is then the UK bank’s responsibility to obtain repayment from the overseas bank.

5. The scheme, which would be restricted to short-term credits with a repayment term of less than one year, would be available only for exports to countries where export credit cover was not available on the commercial market. See: ECGD, “Consultation on the Introduction of a Product Guaranteeing Reimbursement of UK Confirming Banks Under Letter of Credit Arrangements”, http://www.ecgd.gov.uk/consultation_-_letter_of_credit_guarantee_scheme.pdf, para 39: “. . . the current intention is that [the scheme] would apply to Letters of Credit extended in relation to supplies to non-marketable risk countries only”.

7. Although the ECGD proposes to require that the banks undertake anti-corruption due diligence in relation to the exports supported under the scheme, the due diligence procedures fall far short of ECGD's current policies.
8. **The Consultees consider that such proposals constitute an unwarranted departure from a range of the ECGD's stated policies and from the Government's broader policies on sustainable development, combating corruption and ensuring that interventions to address the economic downturn work to achieve a "green" recovery. The ECGD's purported justifications for its departures from established policy do not stand up to scrutiny.**
9. **The Consultees consider that, should the Letter of Credit Guarantee Scheme go ahead, it must be subject to the ECGD's current environmental, human rights, anti-corruption due diligence procedures.**
10. **In particular:**
 - **The current proposal fails to take into account the Government's stated policies on interventions to counter the effects of the recession;**
 - **The ECGD has misdirected itself as to the extent and applicability of its present policies on the proposed Scheme;**
 - **The ECGD has failed adequately to justify the proposed departure from existing environmental and social policies and procedures;**
 - **Even if such a departure were justified, the ECGD has completely failed to consider options for minimising the departure from the existing environmental or policies or mitigating its effects;**

- The ECGD has failed to consider the impact of the proposed environmental and social policy departure upon its legal duty to adequately price premiums;
- The ECGD has failed to adequately justify the proposed departure from existing anti-corruption policies and procedures;
- Even if such a departure were justified, the ECGD has failed to adequately consider options for minimising the departure from the existing environmental or policies or mitigating its effects;
- The ECGD has failed to consider the impact of the proposed anti-corruption policy departures upon its legal duty to adequately price premiums.

11. The Consultees' concerns are set out below.⁶

FAILURE TO TAKE ACCOUNT OF GOVERNMENT POLICY ON INTERVENING TO ADDRESS THE RECESSION

12. As noted above (para 2), it is the Government's policy that interventions to address the economic downturn should also "*protect the environment*"⁷ and promote a "*green, inclusive and sustainable recovery*".⁸
13. The ECGD's Consultation paper fails to take into account what is clearly a highly material consideration. Further, ECGD's proposal to exempt the Letter of Credit Guarantee Scheme from effective environmental and social due diligence flies in the face of the Government's clearly stated policy goals. Under the current proposals, ECGD will not be in a position to screen out exports intended for projects or purposes that are environmentally and socially harmful.

6. A further scheme – known as the Export Credit Reinsurance Scheme – is also being contemplated by ECGD. Although details have not been announced, the ECGD has stated that the scheme is likely to "have similar constraints regarding the application of ECGD policies in relation to social and environmental matters". The comments in this submission should therefore be taken to apply, in broad terms, to the proposed Export Credit Reinsurance Scheme as well.

7. "Statement on the G20", 2 April 2009, http://www.hm-treasury.gov.uk/statement_chx_020409.htm.

8. G20, "Global plan for recovery and reform: the Communiqué from the London Summit", <http://www.londonsummit.gov.uk/en/summit-aims/summit-communique/>, Para 4.

14. The Consultees consider that the ECGD must take proper account of the Government's stated policy when formulating the Letter of Credit Scheme. Further, the Consultees consider that the proposed Letter of Credit Scheme must be consistent with the stated goals of the government's current interventions in the economy, as set out in the London Statement of the G20.⁹ The present proposals fall far short of the level of environmental and social due diligence required.

MISDIRECTION AS TO THE APPLICABILITY OF EXISTING POLICY ON ENVIRONMENTAL AND SOCIAL DUE DILIGENCE SCREENING

15. The ECGD has adopted a number of policies and commitments relating to sustainable development. These are set out in three main documents: its Business Principles, its Mission Statement and its Case Impact Analysis Procedures (CIAP).
16. The Business Principles¹⁰ were published in 2000, following a public consultation in 1999. The Business Principles provide that ECGD will "*promote a responsible approach to business and will ensure our activities take into account the Government's international policies, including those on sustainable development, environment, human rights, good governance and trade.*"¹¹
17. Accompanying the Business Principles is a Mission Statement, which affirms, *inter alia*, that ECGD's objectives are:
- "*to operate in accordance with its Business Principles, so that its activities accord with other Government objectives, including those on sustainable development, human rights, good governance and trade.*"¹²

9. http://www.wcoomd.org/files/1.%20Public%20files/PDFandDocuments/Highlights/G20_Final_London_Communique.pdf

10. ECGD, Business Principles, 2000, <http://www.ecgd.gov.uk/ecgdbusprinciples.pdf>.

11. ECGD, Business Principles, 2000, p.3, <http://www.ecgd.gov.uk/ecgdbusprinciples.pdf>.

12. "ECGD's Mission and Objectives", <http://www.ecgd.gov.uk/index/aboutecgd/ecgdmissionandobjectives.htm>.

18. The Case Impact Analysis Process (CIAP),¹³ adopted in April 2003, is intended to implement the ECGD's Business Principles. The CIAP states that it is ECGD's policy to ensure that:
- *"all exports supported by ECGD are compatible with [ECGD's] Statement of Business Principles";*¹⁴
 - *"all decisions on ECGD support have taken into account Government policies on the environment, sustainable development, and human rights";*¹⁵ and that
 - *"projects [for which ECGD-supported exports are intended] should comply in all material respects with the relevant safeguard policies, directives and environmental guidelines of the World Bank Group".*¹⁶
- Projects that do not meet the relevant standards will normally be considered unacceptable.¹⁷
19. In its current consultation paper, the ECGD attempts to justify its intention to exempt the Letter of Credit Guarantee Scheme from the above policies on the grounds that such procedures and standards were drawn up *"in relation to ECGD's business as it existed in 1999 and 2000"* (a time when ECGD was primarily underwriting medium and long-term credits rather than short-term ones) and it would be *"impracticable"* to extend the procedures *"beyond the type of product for which they were designed"*.¹⁸
20. This statement is based upon misconceptions.
21. First, Stephen Byers, the Secretary of State responsible for introducing the ECGD's environmental screening procedures in 1999, made it very

13. ECGD, Case Impact Analysis Process, 2003 and subsequently amended. The latest version is available at http://www.ecgd.gov.uk/ecgd_case_impact_analysis_process_-_may_2004-3.pdf.

14. Export Credits Guarantee Department, "Business Principles Unit - Case Impact Analysis Process", May 2004, http://www.ecgd.gov.uk/ecgd_case_impact_analysis_process_-_may_2004-3-.pdf, para.1.1.

15. Export Credits Guarantee Department, "Business Principles Unit - Case Impact Analysis Process", May 2004, http://www.ecgd.gov.uk/ecgd_case_impact_analysis_process_-_may_2004-3-.pdf, para.1.1.

16. Export Credits Guarantee Department, "Business Principles Unit - Case Impact Analysis Process", May 2004, http://www.ecgd.gov.uk/ecgd_case_impact_analysis_process_-_may_2004-3-.pdf, para.2.6.

17. ECGD, Case Impact Analysis Process, 2003, para. 2.8. The latest version of the CIAP is available at http://www.ecgd.gov.uk/ecgd_case_impact_analysis_process_-_may_2004-3.pdf.

18. ECGD, "Consultation on the Introduction of a Product Guaranteeing Reimbursement of UK Confirming Banks Under Letter of Credit Arrangements", http://www.ecgd.gov.uk/consultation_-_letter_of_credit_guarantee_scheme.pdf, paras 35 and 39:

"The Business Principles were written, and subsequently elaborated in a series of policy statements, in relation to ECGD's business as it existed in 1999 and 2000" and "It would be impracticable for all ECGD's current assessment procedures, whether relating to sustainable development, the environment or bribery and corruption, to be extended beyond the type of product for which they were designed to the LCGS".

clear when announcing the procedures that their express purpose was to ensure that “*environmental concerns are taken into account in deciding whether to offer support from British taxpayers.*”¹⁹ Since such concerns potentially arise in relation to all exports, the Secretary of State determined that *all* applications received by ECGD should be screened. At no point did he suggest that short-term credits should be exempt and, given the stated purpose of the procedures, it would have been entirely unreasonable for him to have done so. The Secretary of State’s announcement is the only official statement available on the purpose of the screening policy and should therefore be taken as the basis on which subsequent procedures were founded.

22. Second, it is wholly wrong to suggest that short-term insurance was not part of ECGD’s business “*as it existed in 1999 and 2000*”.²⁰
23. Although ECGD privatised its short-term credit business in 1991, ECGD retained (and continues to retain) a role as “*reinsurer of last resort*” for the short-term credit market.²¹ Indeed, the decision to continue offering a

19. Department of Trade and Industry, Press Notice, P/99/953 23 November 1999, available at <http://www.ginfo.pl/more/277847.GREENPEACE+DECISION+ON+HABITATS+DIRECTIVE+-+BYERS.html>.

“Stephen Byers also announced the introduction of a new environmental screening procedure for companies applying for a credit guarantee from the Export Credit Guarantee Department (ECGD). The procedure will help ECGD identify environmentally sensitive projects so that the environment impact can be fully assessed before a decision is taken to underwrite a project. Stephen Byers said: ‘From January, applications for export credits will be subject to environmental screening. It is clearly only right that environmental concerns are taken into account in deciding whether to offer support from British taxpayers.’”

20. ECGD, “Consultation on the Introduction of a Product Guaranteeing Reimbursement of UK Confirming Banks Under Letter of Credit Arrangements”, http://www.ecgd.gov.uk/consultation_-_letter_of_credit_guarantee_scheme.pdf, para 35.

21. John Weiss, ECGD, to Hugh Bailey, British Exporters Association, 5 October 2004, http://www.ecgd.gov.uk/reinsurance_consultation.pdf:

“[In 2000] it was agreed to place a ‘standby’ arrangement under which ECGD would act strictly as a ‘reinsurer of last resort’ to private insurers on a risk by risk basis should there be a proven failure in the reinsurance market.”

See also: ECGD, “A Report on the provision of ECGD Reinsurance for Exports Sold on Short Terms of Payment”, 2000, para 8.3:

“The fact that ECGD still provides reinsurance demonstrates that there still appears to be a continued need for State support but at the edges.”

ECGD goes on to note:

“For the high-risk markets, where there are still private market capacity constraints, a withdrawal of the National Interest facility would clearly have an immediate impact on exports to these countries. ECGD should continue to provide support for these markets while demand remains.”

“standby” facility for short-term reinsurance was taken at the same time that ECGD was formulating its Business Principles in 1999-2000.²²

24. Furthermore, in July 1999, when ECGD was consulting stakeholders on its future Mission Statement and Status, ECGD also announced that it would be making short-term insurance available for exports to Iran.²³
25. Those drawing up the Business Principles and new Mission Statement were or ought to have been aware of ECGD’s continued involvement in short-term credit insurance, particularly since the purpose of both documents was to set down policies that were specifically intended to determine the handling of ECGD’s products *as a whole*.
26. Moreover the ECGD’s commitment to providing short-term credit insurance “for a hard core of high-risk countries”²⁴ continued throughout the period that ECGD “*elaborated [the Business Principles] into a series of policy statements*”.²⁵ For example, from December 2003 to June 2004, a period when CIAP was being elaborated, it offered a short-term credit facility for Iraq.²⁶ At no time, however, did ECGD suggest that the scheme would be (or should be) exempt from either the Business Principles or CIAP.
27. In 2004-05, two years after the Business Principles became operational and a year after CIAP came into force, ECGD again reviewed its short-

22. ECGD, “A Report on the provision of ECGD Reinsurance for Exports Sold on Short Terms of Payment”, 2000, p.1.

23. Hansard, “Iran: ECGD Cover”, House of Lord, 30 July 1998, Col 1617, <http://www.publications.parliament.uk/pa/ld/199798/dhansrd/vo980730/text/80730-02.htm>:

“My right honourable friend the President of the Council when President of the Board of Trade, announced that ECGD has reintroduced insurance cover for capital goods and services contracts concluded on cash payment terms and short-term reinsurance capacity for private sector insurers of consumer goods exports.”

See also: “Presswire, “ECGD reintroduces short-term cover for British exports to Iran”, 28 July 1998, http://findarticles.com/p/articles/mi_hb5243/is_199807/ai_n19794344/?tag=rel.res3.

24. ECGD, “A Report on the provision of ECGD Reinsurance for Exports Sold on Short Terms of Payment”, 2000, p.1.

25. ECGD, “Consultation on the Introduction of a Product Guaranteeing Reimbursement of UK Confirming Banks Under Letter of Credit Arrangements”, http://www.ecgd.gov.uk/consultation_-_letter_of_credit_guarantee_scheme.pdf, para 39.

26. Hansard, “Holding answer from Mr Alexander” 21 October 2004, <http://www.parliament.the-stationery-office.com/pa/cm200304/cmhansrd/vo041026/text/41026w16.htm>:

“An overall US\$100 million ECGD short-term credit facility was available between 5 December 2003 and 28 June 2004, to assist exporters to finance contracts by providing guarantees to UK based banks issuing letters of credit for the purchase of UK goods and services.”

See also: “UK exporters get state guarantees to do business in Iraq”, Africa and the Middle East Telecom, 1 December 2003, <http://www.allbusiness.com/insurance/financial-guaranty-insurance-commercial/7865977-1.html>;

term reinsurance facility, reconfirming that it would continue to provide a “standby” scheme.²⁷ Again, there was no suggestion by ECGD that its short-term reinsurance facility was exempt (or should be exempt) from ECGD’s policies as set out in CIAP and the Business Principles.

28. Since 2004, ECGD has covered at least one ‘cash’ (that is, short-term)²⁸ reinsurance involving goods for a nuclear power station in South Korea.²⁹ The reinsurances were subject to social and environmental screening under ECGD’s standard procedures.³⁰ ECGD has given no indication that the screening process delayed support for the reinsurance.
29. From the above, it is clear:
 - (a) that the Business Principles and subsequent policies were intended from the outset to apply to all of ECGD’s products;
 - (b) that short-term credits, if infrequently supported, were part of the services that ECGD offered both at the time the Business Principles and CIAP were drawn up and subsequently; and
 - (c) that short-term insurance covered since 1999 *has* been subject to screening.
30. Indeed, far from being a continuation of existing policy, as ECGD is seeking to imply, **the decision to exempt the new Letter of Credit Guarantee scheme from ECGD’s social and environmental due diligence procedures and standards is a major departure from such policy.**

27. John Weiss, ECGD, to Hugh Bailey, British Exporters Association, 30 September 2005, http://www.ecgd.gov.uk/letter_to_consultees_v5_final_pdf_20050930.pdf. “It has been decided that ECGD should retain the current standby arrangements.”

28. In ECGD’s terminology, credit insurance policies in respect of capital goods and services where the term of repayment is under two years are known as “cash business”. See: ECGD, “Consultation on the Introduction of a Product Guaranteeing Reimbursement of UK Confirming Banks Under Letter of Credit Arrangements”, http://www.ecgd.gov.uk/consultation_-_letter_of_credit_guarantee_scheme.pdf, footnote 1.

29. Patrick Crawford, ECGD, Oral evidence to Environmental Audit Committee, 16 July 2008, Q108, p.Ev58, <http://www.publications.parliament.uk/pa/cm200708/cmselect/cmenvaud/929/929.pdf>. Mr Crawford stated: “We were providing cash insurance by way of reinsuring the French export credit agency COFACE.”

30. ECGD, Shin Kori Impact Questionnaire and assessment, Released by ECGD to The Corner House in response to Freedom of Information request, EIR (07)04, 25 September 2007.

FAILURE TO PROPERLY CONSIDER DEPARTURE FROM EXISTING POLICY AND FAILURE TO PROPERLY MITIGATE THE EFFECTS OF SUCH DEPARTURE

31. The formulation of the Scheme and this consultation process must properly take place on the footing that the current proposal is a major departure from policy. Such a departure must be properly justified and involve full consideration of the ECGD's policies and obligations. Where it is concluded, exceptionally, that a departure is justifiable, the ECGD must fully consider alternative practical options which will minimise the scope and impact of such a departure.
32. The ECGD fails to offer any justification for a departure from its policies and obligations save administrative expediency. The consultation paper simply posits that the standard social and environmental due diligence procedures are too time consuming and might jeopardise exporters obtaining contracts.³¹ Yet ECGD's own surveys reveal that "*the analysis of potential impacts has not impeded the processing of any application*".³² In evidence to the Environmental Audit Committee in 2003, the ECGD also stated: "*The introduction of the case impact analysis process has not impeded the flow of business through the Department as it has always been completed prior to the completion of other parts of the overall analysis process.*"³³
33. In proposing to depart from its policies, the ECGD has failed to consider any alternative safeguards. No consideration has been given to alternative solutions which might better accord with its policies and obligations. The only option that has been considered is a wholesale exemption.

31. ECGD, "Description of Proposed Letter of Credit Master Guarantee Scheme", paras 21 and 46, http://www.ecgd.gov.uk/annex_a_-_description_of_lcgs-2.pdf.

32. ECGD, "Public Consultation on Case Impact Analysis", 2002, para 16, <http://www.ecgd.gov.uk/consultationdoc210602.doc>. See also: ECGD, "Trading Fund Consultation Exercise, Summary of Representations – Issues and Statistics", <http://www.ecgd.gov.uk/trading-fund-consultation-keystatistics.doc>. Only 6% of respondents were "concerned at ECGD's environmental screening process".

33. ECGD, "ECGD and Sustainable Development", Evidence to Environmental Audit Committee, "The Export Credits Guarantee Department and Sustainable Development – Evidence", 2003, p.Ev63, <http://www.publications.parliament.uk/pa/cm200203/cmselect/cmenvaud/689/689.pdf>.

34. The Consultees endorse the policy established in 1999 by the then Secretary of State for Trade and Industry that ECGD should screen projects in order to ensure that “*environmental concerns are taken into account in deciding whether to offer support from British taxpayers*”. They consider that any departure from this policy would conflict with the UK’s wider human rights and sustainable development objectives and cannot be justified on the grounds of administrative expediency, particularly when the ECGD has provided no evidence that this is the case. The Consultees consider that the Letter of Credit Guarantee Scheme should be subject to ECGD’s Business Principles and CIAP and would strongly oppose any exemptions being granted.

FAILURE TO CONSIDER IMPLICATIONS OF PROPOSED EXEMPTION FOR ECGD’S DUTY TO PRICE PREMIUMS ADEQUATELY

35. The ECGD is required by Ministers to break even.³⁴ This requirement arises from a number of international agreements to which the UK is a party,³⁵ including the EU’s legally-binding “Council Directive 98/29/EC of 7 May 1998 on harmonisation of the main provisions concerning export credit insurance for transactions with medium and long-term cover”.³⁶
36. The Directive requires, *inter alia*, that “*the premium charged for export credit insurance shall correspond to the risk (country, sovereign, public and/or private risk) covered, adequately reflect the scope and the quality of the cover granted, [and] not be inadequate to cover long-term operating costs and losses*” (emphasis added).
37. The ECGD has repeatedly stressed the role that its environmental and social due diligence procedures have played in improving its financial risk

34. Secretary of State for Trade and Industry/ Chief Secretary to Treasury, “Estimating the economic cost of ECGD”, 16 March 2005, <http://www.berr.gov.uk/files/file16384.pdf>.

35. For example, OECD, *Arrangement on Officially Supported Export Credits*, December 2007, TAD/PG (2007) 28/Final, Paris, 2007. Article 1 (a), [http://www.oalis.oecd.org/oalis/2007doc.nsf/LinkTo/NT00005A06/\\$FILE/JT03238355.PDF](http://www.oalis.oecd.org/oalis/2007doc.nsf/LinkTo/NT00005A06/$FILE/JT03238355.PDF); and World Trade Organisation, Agreement on Subsidies and Countervailing Measures, Annex 1, http://www.wto.org/English/docs_e/legal_e/24-scm.pdf.

36. “Council Directive 98/29/EC of 7 May 1998 on harmonisation of the main provisions concerning export credit insurance for transactions with medium and long-term cover”, Council Directive 98-29-EC, 7 May 1998

analysis. Such analysis is critical to the prudential pricing of premiums and hence to ECGD's ability to meet its duty to break even.

38. In 2000, for example, ECGD's 'Mission and Status Review' stated: "*Ill-conceived and poorly executed projects can have negative impacts on the environment and local people and make for poorer quality risk. Bribery and corruption can also undermine the economic benefits of a project and even the economy of the buying country. It is in ECGD's self-interest to take full account of these factors in its assessments and to promote good projects.*"³⁷
39. The Review went on to describe the risk assessment benefits that resulted from ECGD's environmental screening procedures: "*ECGD's initial environmental screening process helps identify whether a particular project on which cover is sought may raise sensitive issues. When such projects are identified, they go through a second stage process of 'due diligence' – in which ECGD and the project lenders find out more, taking independent advice as necessary – to help assess project risks and related issues and determine how to take matters forward.*"³⁸
40. In evidence to the Environmental Audit Committee in 2003, ECGD also stressed that CIAP had improved its financial risk assessment: "*The introduction of the case impact analysis process has . . . led to a much greater understanding of the technical details of the goods/services being exported and the overseas projects. In some cases this has resulted in a better understanding and handling of the risks involved in the case.*"³⁹
41. The ECGD's Chief Executive, Vivien Brown, amplified on this point in oral testimony to the Committee: "*[The] greater focus on environmental impact is partly to reflect one of the points in our Mission and Status Review. We are giving greater weight to ensure that we are consistent with other Government policies. It is a business issue. I think that projects which have difficult impacts are often difficult projects to execute and*

37. ECGD, Response to Mission and Status Review, 2000, para 1.25, www.ecgd.gov.uk/missionstatusreview.pdf.

38. ECGD, Response to Mission and Status Review, 2000, para 1.26, www.ecgd.gov.uk/missionstatusreview.pdf

39. ECGD, "ECGD and Sustainable Development", Evidence to Environmental Audit Committee, "The Export Credits Guarantee Department and Sustainable Development – Evidence", 2003, p.Ev63, <http://www.publications.parliament.uk/pa/cm200203/cmselect/cmenvaud/689/689.pdf>.

*therefore they do raise business and risk issues for us as an export credit agency.*⁴⁰

42. David Allwood, the head of ECGD's Business Principles Unit, also stressed that ECGD's "Productive Expenditure Test"⁴¹ (part of its environmental and social due diligence) provides a key tool for enhancing ECGD's financial risk assessment: "*Repayment risk is one of the primary determinant used by ECGD in making its decision on support. Although we provide insurance against non-payment, because of our break-even requirement, we analyse the risk of non-payment very carefully. The Productive Expenditure Test covers all exports considered by ECGD . . .*" (emphasis in original).⁴² According to ECGD, at least one project has been turned down because of the risks revealed by the Productive Expenditure Test.⁴³
43. In support of its proposal to exempt the Letter of Credit Guarantee Scheme from ECGD's environmental and social procedures, ECGD now claims, without providing any evidence, that the CIAP and its underlying Business Principles are concerned solely with "*assessment of matters other than payment risk*".
44. This is plainly incorrect as the previous policy statements by the ECGD demonstrate. This fundamental misconception fatally undermines the rationale of exempting the Scheme from the ECGD's environmental and social procedures.
45. In light of ECGD's previous recognition that environmental and social due diligence is "a business issue" and that environmental and social issues

40. Vivien Brown, ECGD, Oral Evidence to Environmental Audit Committee, "The Export Credits Guarantee Department and Sustainable Development – Evidence", 2003, Q85, p.Ev82,

<http://www.publications.parliament.uk/pa/cm200203/cmselect/cmenvaud/689/689.pdf>.

41. A test carried out by ECGD in consultation with the Department for International Development to ensure that countries defined as Heavily Indebted Poor Countries and those which are wholly dependent on funding from the World Bank's International Development Association do not take on export credit loans that would create an unsustainable debt burden.

42. David Allwood, ECGD, "Beyond Business Principles – ECGD Response", 23 May 2002, p.5, available from The Corner House, Station Road, Sturminster Newton, Dorset DT10 1YJ.

See also: "Beyond Business Principles: NGO Seminar on Reform of Export Credits Guarantee Department - Seminar Report", 23 May 2002, <http://www.thecornerhouse.org.uk/item.shtml?x=52220#index-02-08-00-00>

43. Vivien Brown, ECGD, Oral Evidence to Environmental Audit Committee, "The Export Credits Guarantee Department and Sustainable Development – Evidence", 2003, Q90, p.Ev83,

<http://www.publications.parliament.uk/pa/cm200203/cmselect/cmenvaud/689/689.pdf>.

“raise business and risk issues for us as an export credit agency, ”⁴⁴ The Consultees consider that ECGD’s present proposal to exempt the Letter of Credit Guarantee Scheme (LCGS) from ECGD’s environmental and social due diligence procedures has been made on the basis of a fundamental misconception. **The Consultees consider that a consequence of this misconception is that the current proposal threatens to undermine the Department’s ability to price premiums in accordance with the legally-binding requirements of EC Directive 98/29/EC and thereby meet the Government’s policy that the Department should operate at no net cost to the taxpayer. The ECGD has failed entirely to assess the extent of this risk.**

46. The ECGD’s environmental and social due diligence, though open to improvement, plays a vital role in alerting ECGD to potential financial risks that would otherwise not be assessed. This applies as much to exports supported by short-term credits as to other exports. As noted, ECGD recently supported cash reinsurance for a nuclear plant. Many other exports (pesticides, for example) for which short-term insurance is likely to be sought have potentially harmful environmental and human rights impacts, which may translate into repayment risks. Even where exports are intended for “green” projects – parts for wind turbines, for example – the projects may involve a range of human rights impacts, such as forced evictions, that could delay payment. The Consultees therefore consider that scrutiny of the social, human rights, developmental and environmental impacts of exports supported under the Letter of Credit Guarantees Scheme is essential if the interests of the taxpayer are to be protected.

FAILURE TO JUSTIFY WEAKENING OF ANTI-BRIBERY RULES

47. In 2004, the ECGD adopted strengthened anti-bribery rules which went beyond those required internationally for OECD-based export credit

44. Vivien Brown, ECGD, Oral Evidence to Environmental Audit Committee, “The Export Credits Guarantee Department and Sustainable Development – Evidence”, 2003, Q85, p.Ev82, <http://www.publications.parliament.uk/pa/cm200203/cmselect/cmenvaud/689/689.pdf>.

agencies, under the OECD's then Action Statement on Bribery and Officially Supported Export Credits (since upgraded from an Action Statement to a Recommendation⁴⁵).

48. As with its environmental and social due diligence procedures, the ECGD's anti-bribery rules applied to *all* transactions undertaken by ECGD, including short-term credits.
49. The ECGD is now proposing to weaken the rules it applies to short-term credits and to apply only those applicable under a very limited reading of the OECD Recommendation.
50. Because the ECGD proposes to have no direct contract with the exporter benefiting from the Letter of Credit Scheme (under which the "applicant" will be the participating bank rather than the exporter), the new rules will severely undermine the ECGD's ability to *combat* or *deter* bribery, the principle goals respectively of the ECGD's Business Principles and of the OECD Recommendation.
51. For example, under the proposed rules and arrangements, the exporter will be under no requirement to:
 - Declare that neither they nor any of their directors have admitted to, or been convicted of, engaging in any form of bribery or corruption;
 - Disclose the identities of agents;
 - Make reasonable enquiries concerning any of its subsidiary companies, agents or consortium partners who, in each case, are involved in the contract for which ECGD's support is sought and to confirm that, on the basis of those reasonable enquiries, the applicant has no cause to believe that any of those parties, or any of their directors, has admitted to, or been convicted of, engaging in any corrupt activity.⁴⁶
52. Under the proposed new rules, the banks, rather than ECGD, will be responsible for undertaking the anti-bribery due diligence. But they will be

45. A Recommendation has to be signed by the OECD Council, not just the Export Credit Group, and thus carries a higher level of political commitment.

46. All of the above are required of exporters under current ECGD rules where the exporter is the applicant. See: <http://www.ecgd.gov.uk/index/public-information/anti-bribery-and-corruption.htm>.

exempt from many of the procedures that are currently required under ECGD anti-bribery rules. For example, the banks will be under no obligation:

- To seek information on whether or not the exporter has been convicted of bribery or been debarred by any of the major multilateral development banks for bribery;
- To conduct “enhanced due diligence” where there are indications (known as “red flags”) that bribery may have occurred;
- To report suspicions of bribery to law enforcement authorities;
- To suspend approval of the Letter of Credit where there is credible evidence that a bribe has been paid in the award or execution of the export contract.

53. Under the new rules, ECGD will also exclude itself, by virtue of having no direct contractual relationship with the exporter, from its current rights:

- To inspect the exporters’ books where there is suspicion of bribery; and
- To take legal action against the exporter in the event of bribery-related misrepresentation.

54. In effect, the contractual arrangements proposed for the Letter of Credit Guarantee Scheme, under which the ECGD has no legally-binding relationship with the exporter and where responsibility for anti-bribery due diligence is outsourced to the participating banks, would result in ECGD’s current anti-corruption procedures being effectively shredded. As a consequence, ECGD would not be in a position to fulfil its stated objective of “combating bribery”.⁴⁷ Since corruption carries major financial risks, the proposed procedures would also weaken ECGD’s ability to manage its financial risks properly or to price its premiums properly.

55. The Consultees strongly oppose the proposed weakening of ECGD current anti-bribery procedures with respect to the Letter of Credit

47. ECGD, Business Principles, p.8, <http://www.ecgd.gov.uk/ecgds-business-principles.pdf>.

Guarantee Scheme. The Consultees consider the proposed contractual and management regime would result in a major departure from ECGD's stated policies that has not been justified.

56. The Consultees are strongly of the view that the ultimate beneficiary of ECGD support – in this case, the exporter – should as a minimum have a contractual relationship with ECGD; and that ECGD must be in a position to ensure that the exporter's contract is not tainted by bribery. This is the intention of ECGD's current anti-bribery rules, which were drawn up at a time when ECGD was fully cognizant of the possibility that its short-term credit facilities might be used but to which the anti-bribery rules have, up to now, applied.

CONCLUSIONS AND RECOMMENDATIONS

57. The Consultees strongly oppose the proposed Letter of Credit Guarantee Scheme in its current proposed form. They consider that the exemption of the Scheme from ECGD's current social, environmental and anti-bribery policies and procedures is a major departure from current policy which the ECGD has failed adequately to grapple with or justify and which, in the Consultees' view, cannot be justified.
58. The Consultees also consider that the Scheme in its current form is at odds with the stated intentions of the Government's intervention strategy for addressing the economic downturn.
59. **The Consultees recommend that:**
- **The Scheme should not go ahead in its current format;**
 - **The ECGD's environmental, social and corruption procedures must apply in full to the Scheme; and**
 - **The Scheme be targeted to supporting exports that will contribute to "an inclusive, green and sustainable recovery", possibly along the lines of the "green credit line" currently being negotiated by the ECGD with Indian banks;⁴⁸**

48. Trade Finance Magazine, "ECGD negotiates Green Credit Line for India", 27 May 2009, <http://www.tradefinancemagazine.com/Article/2211199/ECGD-negotiates-green-credit-line-for-India.html?POS=1150853>. Trade Finance reports: "ECGD, the UK's export credit agency, is in negotiations

- ECGD adopts contractual arrangements for the Letter of Credit Guarantee Scheme under which the Applicant would be the exporter rather than the participating bank – and that the ECGD’s current rules should apply as for any other applicant.
 - The details of the export credits guaranteed should be made publicly accessible.
60. In the event that ECGD persists in its proposal not to apply its policies in full to the Scheme, then the Consultees recommend, as a minimum, that ECGD:
- Requires that the exporter seeking short-term credit insurance should complete an easy-to-complete “information form” as part of their contractual obligations. The form should require that the exporter provides *inter alia*: basic details about the environmental and social impacts of the export and the project or uses for which it is intended; a warranty that no bribes have been paid; the name of any agents used to secure the export contract; and a statement that the exporter is aware that, by entering into a contract with ECGD, the ECGD has powers to audit the exporter’s accounts;
 - ECGD charges premiums that are sufficient to cover the staffing at the ECGD to process such forms and follow up where appropriate;
 - A legally-binding contractual relationship between the exporter and the ECGD should be established through the exporter, rather than the participating bank, paying the Scheme’s premium.

The Corner House and Jubilee Debt Campaign, 30 June 2009